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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

JOHN F. WYLLIE, MAINE, MAJORITY STAFF DIRECTOR
 JEFFREY A. WYLLIE, MAINE, MAJORITY STAFF DIRECTOR

December 19, 2014

The Honorable Mathy Stanislaus
 Assistant Administrator
 Office of Solid Waste and Emergency Response
 U.S. Environmental Protection Agency
 Washington, DC 20460

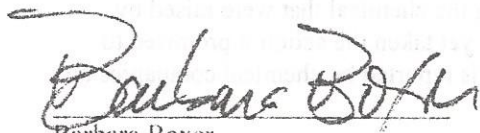
Dear Assistant Administrator Stanislaus:

Thank you for appearing before the Committee on Environment and Public Works on December 11, 2014, at the hearing entitled, "Oversight of the Implementation of the President's Executive Order on Improving Chemical Facility Safety and Security." We appreciate your testimony and we know that your input will prove valuable as we continue our work on this important topic.

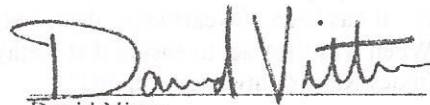
Enclosed are questions for you that have been submitted by Senators Boxer, Markey, Murray, and Enzi for the hearing record. Please submit your answers to these questions by COB December 31, 2014, to the attention of Drew Kramer, Senate Committee on Environment and Public Works, 410 Dirksen Senate Office Building, Washington, DC 20510. In addition, please provide the Committee with a copy of your answers via electronic mail to Drew_Kramer@epw.senate.gov. To facilitate the publication of the record, please reproduce the questions with your responses.

Again, thank you for your assistance. Please contact Jason Albritton of the EPW Committee's Majority staff at 202-224-8832, Bryan Zumwalt of the EPW Committee's Minority staff at 202-224-6176, Michael Waske of the HELP Committee's Majority staff at 202-224-5375, or Kyle Fortson of the HELP Committee's Minority staff at 202-224-6770 with any questions you may have. We look forward to reviewing your answers.

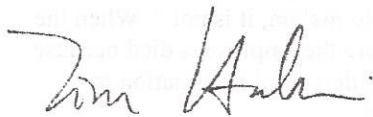
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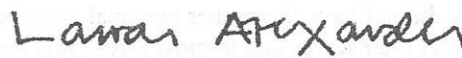
Barbara Boxer
 Chairman
 Committee on Environment and Public Works



David Vitter
 Ranking Member
 Committee on Environment and Public Works



Tom Harkin
 Chairman
 Committee on Health, Education,
 Labor, and Pensions



Lamar Alexander
 Ranking Member
 Committee on Health, Education,
 Labor, and Pensions

**Environment and Public Works Committee Hearing
December 11, 2014
Follow-Up Questions for Written Submission**

Questions for Stanislaus

Questions from:

Senator Barbara Boxer

1. On what date do you commit to completing ALL of the Executive Order's directives within your Agency's jurisdiction?
2. Since 2002, the Chemical Safety Board (CSB) has recommended that ammonium nitrate hazards be incorporated into EPA's risk management program. Will EPA commit to address ammonium nitrate fertilizer hazards under its risk management program, and if so, when? Will implementation of these changes be completed before the President leaves office?
3. On March 5, 2014, I asked Administrator McCarthy to have the Working Group consider using EPA's existing authority under the Clean Water Act to address risks posed by above ground chemical storage tanks in the wake of the Freedom Industries spill. In your May 8, 2014 response to me, you assured me that the Working Group would consider exercising this authority. Despite your assurance, the Working Group's Status Report to the President does not even mention this authority. Will EPA commit to fully evaluate options for actions under Section 311(j)(1)(C) of the Clean Water Act to regulate above ground chemical storage tanks? If so, when will this analysis be complete? Will you commit to give me a complete report on your analysis?
4. Methyl mercaptan is a toxic chemical that recently killed 4 workers at the DuPont chemical plant in La Porte, Texas. In 1994, EPA tried to put methyl mercaptan on a list of chemicals that must be reported in EPA's Toxics Release Inventory, which is supposed to help communities better prepare for the risk of a chemical release. When industry challenged the listing, EPA agreed to withdraw it to avoid litigation [59 Fed. Reg. 43048, Aug. 22, 1994]. However, EPA also said that it would promptly act to address the questions about listing the chemical that were raised by industry. It has been 20 years since then, and EPA has not yet taken the action it promised to take. When will EPA act to ensure that methyl mercaptan is reported by chemical companies on their Toxics Release Inventory reports?
5. During the toxic chemical leak at the DuPont chemical plant in La Porte, Texas, last month, a facility employee called 911, but gave no useful details about the chemical released in his call with the 911 operator. In response to the 911 operator's question whether there was a risk to the public from toxic chemicals escaping the facility, he answered "No ma'am, it is not." When the first responders arrived, they were unable to enter the facility where the employees died because they did not have the proper personal protective gear. First responders need information to protect themselves and to most effectively respond to the accident.
 - a. What actions will the Working Group take to ensure that first responders have accurate information before they arrive at the accident scene when there are toxic chemical releases?
 - b. The Working Group's June 4, 2014 Report to the President states that first responders believe information sharing efforts need significant improvement, and that first responders want to be able to obtain the most-actionable information in a user-friendly format. What steps is the

Working Group taking to ensure the information provided to first responders is in an actionable and user-friendly format?

- c. The Working Group's June 4, 2014 Report to the President states that a key lesson learned is that first responders want access to information about enforcement actions taken or violations discovered at facilities, in order to better understand and respond to hazards at chemical facilities. Has the Working Group taken any steps to make this information available to first responders? If not, what steps will the Working Group take to share this information in an easily accessible and user-friendly format?
 - d. In its Report to the President, the Working Group commits to share "certain data elements of CFATS, RMP, PSM, and MTSA data" with first responders and other state, local, and tribal entities. What specific data elements does the Working Group commit to provide first responders? How will that information be made available to first responders?
6. Given the number of accidents that have occurred since the President issued the Executive Order, including the recent fatal toxic gas release at the DuPont plant in Texas that killed four workers, has the urgency to prevent future disasters caused the EPA to expedite the rule-making process to ensure that new RMP rules are issued promptly? Has EPA considered issuing an Alert or other Guidance concurrently with a notice of proposed rulemaking?
 7. After the tragic explosion at the fertilizer plant in West, Texas, the Government Accountability Office (GAO) conducted a review of the federal regulatory agencies' oversight of the safety of ammonium nitrate fertilizer. In the course of conducting that review, GAO was denied access by a number of States to EPCRA reporting data from facilities that handle ammonium nitrate. In addition, the Attorney General of Texas, now Governor-elect, issued a legal opinion arguing that State law allowed for the withholding from the public of information required to be reported under the federal EPCRA statute. When asked by the media how the state could justify withholding this information, he stated that members of the public could simply drive up to the chemical facilities and ask them directly.
 - a. Is EPA aware of other instances in which access to EPCRA reporting data was restricted or refused? If so, please provide a list of all such instances, along with a description of what data was restricted or refused, who restricted or refused it, how and when EPA was made aware of the restriction or refusal, and what EPA did to resolve the problem.
 - b. Will EPA commit to issuing guidance to States making clear that the federal EPCRA statute requires that this information be made public?
 8. The Working Group coordinated a pilot in New York-New Jersey involving multiple agencies at the Federal, state, and local levels.
 - a. What kinds of best practices or innovative methods were developed in the Region 2 Pilot Project developed under the Executive Order and what lessons were learned from the pilot?
 - b. How and when will EPA and the other Working Group agencies apply these lessons in other regions of the country?
 - c. The pilot specifically revealed "the need for Federal, State, and local partners to work together to increase industry's compliance with EPCRA requirements." After reviewing state data on reporting under EPCRA, EPA identified violations at 4 facilities in New York and 13 facilities in New Jersey. Is the Working Group taking steps to ensure that this process of information sharing to increase compliance with EPCRA requirements occurs in other regions? How does the Working Group propose to ensure that such information sharing continues to take place in the future?
 - d. Please provide me with a copy of any report detailing the outcome of the pilot project.

9. What, if anything, has the EPA done to improve communities' access to information and participation during planning for emergency responses? Does the EPA have any plans to further improve this, along with coordination with local responders? If so, please describe all such plans along with a timeline for their completion.
10. The Executive Order directed the Working Group to look at existing statutory authorities, but also required your agency to make recommended legislative changes. The Working Group's report to the President does not contain any recommended legislative changes to the statutes governing EPA's oversight of chemical facility safety. Please provide the Committee with your recommended legislative changes that would improve safety at chemical facilities.

Questions from Senators Barbara Boxer and Edward J. Markey

11. Executive Order 13650 ordered a number of specific actions to be completed by the Working Group. For the following list of actions, please indicate: i) whether the action was completed as directed in the Executive Order; ii) if so, provide a copy of the plan, assessment, list, analysis, recommendations, proposal, options, determination, Request for Information, or Solicitation of Public Input/Comment; and, iii) if not, indicate the date on which the action will be completed as directed. In each response, please also describe how the Working Group had addressed each specific element within each of the specific actions required by the Executive Order.
 - a. The **assessment** conducted by the Attorney General, through the head of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), into the feasibility of sharing data related to the storage of explosive materials with State Emergency Response Commissions (SERCs), Tribal Emergency Response Commissions (TERCs), Local Emergency Planning Committees (LEPCs), Tribal Emergency Planning Committees (TEPCs). (Sec. 3(b); Within 90 days).
 - b. The **assessment** conducted by the Secretary of Homeland Security into the feasibility of sharing Chemical Facility Anti-Terrorism Standards (CFATS) data with SERCs, TEPCs, and LEPCs on a categorical basis. (Sec. 3(c); Within 90 days).
 - c. A **list** of any changes determined to be needed to existing memorandums of understanding (MOUs) and processes between EPA and CSB, ATF and CSB, and the Occupational Safety and Health Administration (OSHA) and CSB for timely and full disclosure of information. Please provide copies of the current drafts of the revised MOUs; or, if it was deemed to be appropriate by the Working Group, a draft of the single model MOU developed with CSB in lieu of existing agreements. (Sec. 4(c); Within 90 days).
 - d. The **analysis**, including **recommendations**, on the potential to improve information collection by and sharing between agencies to help identify chemical facilities which may not have provided all required information or may be non-compliant with Federal requirements to ensure chemical facility safety. (Sec. 5(a); Within 90 days).
 - e. The **recommendations** for possible changes to streamline and otherwise improve data collection to meet the needs of the public and Federal, State, local, and tribal agencies (including those charged with protecting workers and the public), consistent with the Paperwork Reduction Act and other relevant authorities, including opportunities to lessen the reporting burden on regulated industries. (Sec. 5(c); Within 180 days).
 - f. The **options** developed for improved chemical facility safety and security that identifies improvements to existing risk management practices through agency

programs, private sector initiatives, Government guidance, outreach, standards, and regulations. (Sec. 6(a)(i); Within 90 days).

- g. The list of potential regulatory and legislative proposals to improve the safe and secure storage, handling, and sale of ammonium nitrate and identify ways in which ammonium nitrate safety and security can be enhanced under existing authorities. (Sec. 6(b); Within 90 days).
- h. The determination of whether the EPA's Risk Management Program (RMP) and the OSHA's Process Safety Management Standard (PSM) can and should be expanded to address additional regulated substances and types of hazards, and the plan, including a timeline and resource requirements, to expand, implement, and enforce the RMP and PSM in a manner that addresses the additional regulated substances and types of hazards. (Sec. 6(c); Within 90 days).
- i. The list of chemicals, including poisons and reactive substances that should be considered for addition to the CFATS Chemicals of Interest list. (Sec. 6(d); Within 90 days).
- j. The list of changes that need to be made in the retail and commercial grade exemptions in the PSM Standard and the Request for Information designed to identify issues related to modernization of the PSM Standard and related standards necessary to meet the goal of preventing major chemical accidents. (Sec. 6(e); Within 90 days).

Questions from:

Senator Edward J. Markey

- 1) In 2009, during consideration of H.R. 2868, the Administration went through an inter-agency process to establish policy principles related to the use of inherently safer technology. Those principles are pasted below, and were delivered in Congressional testimony by Peter S. Silva, then-Assistant Administrator for Water at EPA as well as a witness representing the Department of Homeland Security. While these principles related to a piece of legislation that was not enacted and thus also not referred to in E.O. 13650, some of the principles do represent general policy statements. You did not fully or directly respond to these questions when I submitted them to you following our March 2014 hearing. Please do so now.
 - a. Does the Administration continue to believe that all high-risk chemical facilities should assess IST methods and report the assessment to the federal government? If not, why not (and please provide copies of documents that establish the Administration's new policy)?
 - b. Does the Administration continue to believe that regulators should have the authority to direct the highest risk chemical facilities to implement IST methods if such methods enhance overall security, are feasible, and, in the case of water sector facilities, consider public health and environmental requirements? If not, why not (and please provide copies of documents that establish the Administration's new policy)?
 - i. The Administration supports consistency of IST approaches for facilities regardless of sector.
 - ii. The Administration believes that all high-risk chemical facilities, Tiers 1-4, should assess IST methods and report the assessment in the facilities' site security plans. Further, the appropriate regulatory entity should have the authority to require facilities posing the highest degree of risk (Tiers 1 and 2) to implement IST method(s) if such methods enhance overall security, are feasible, and, in the case of water sector facilities, consider public health and environmental requirements.
 - iii. For Tier 3 and 4 facilities, the appropriate regulatory entity should review the IST assessment contained in the site security plan. The entity should be authorized to provide recommendations on implementing IST, but it would not require facilities to implement the IST methods.
 - iv. The Administration believes that flexibility and staggered implementation would be required in implementing this new IST policy. DHS, in coordination with EPA, would develop an IST implementation plan for timing and phase-in at water facilities designated as high-risk chemical facilities. DHS would develop an IST implementation plan for high-risk chemical facilities in all other applicable sectors."
- 2) The Department of Homeland Security¹ and EPA² have both repeatedly stated in Congressional testimony that the exclusion of drinking water and wastewater treatment facilities from federal chemical security regulations is a critical security gap.

¹ <https://www.dhs.gov/news/2011/03/30/written-testimony-nppd-house-committee-energy-and-commerce-hearing-titled-hr-908>,

- a. Does EPA still agree with its prior statements? If not, please explain why not
- b. In 2009, the Administration also believed that "EPA should be the lead agency for chemical security for both drinking water and wastewater systems, with DHS supporting EPA's efforts." Does EPA still agree with this statement, and if not, why not, given the nexus between the requirements for safe drinking water and treatment of wastewater and the need to secure and protect the public from the chemicals that are often used to achieve these requirements?
- c. Will EPA use its RMP, Safe Drinking Water Act or Clean Water Act authority to require upgrades to security for drinking and wastewater facilities in light of the long-standing critical security gap for these facilities? Please provide me with the specific actions EPA plans to take along with a timeline for their completion. If not, why not?
- d. Numerous drinking and wastewater facilities have successfully and inexpensively incorporated IST into their operations, including the replacement of chlorine gas with sodium hypochlorite or UV systems. Does EPA believe that the adoption of IST should be considered by all drinking and wastewater facilities as one measure that could address the critical security gap that exists for these facilities? Why or why not?

<http://democrats.energycommerce.house.gov/sites/default/files/documents/Testimony-Beers-EE-Drinking-Water-System-Security-CFAT-Act-2009-10-1.pdf>

² http://www.epa.gov/ocir/hearings/testimony/111_2009_2010/2010_0728_ccd.pdf,

http://www.epa.gov/ocirpage/hearings/testimony/111_2009_2010/2009_1001_pss.pdf

Questions from:

Senator Patty Murray

1. As you know, the Emergency Planning and Community Right-to-Know Act was passed in 1986, and provides resources to plan for chemical emergencies. Since its enactment there have been a large number of incidents, highlighting the need for substantial emergency planning.
 - a. Do the recent events at the DuPont industrial plant and the West Fertilizer Company facility in Texas warrant a statutory update of the Emergency Planning and Community Right-to-Know Act?
 - i. How have the owners of chemical facilities contributed to the training of first responders to potential accidents? How has the agency ensured that first responders are receiving adequate training?
 - b. How have Congress' repeated cuts to the EPA's budget and governing from crisis to crisis impacted the agency's ability to reach out to stakeholders and gather meaningful information? If Congress fails to repeal sequestration for the next fiscal year, how will implementation of the President's executive order be impacted?

Questions from:

Senator Michael B. Enzi

1. The Federal Action Plan outlined in the "Action to Improve Chemical Facility Safety and Security" report includes, under Item 4, 'Expanding Tools to Assist SERCs, TERCs, LEPCs, and TEPCs in Collecting, Storing, and Using Chemical Facility Information,' the intention to improve the Computer-Aided Management of Emergency Operations (CAMEO) hazardous material response software in order to expand analytical capabilities and promote information sharing. My understanding is that this is being developed at the EPA. Is the EPA considering options for enhancing, supplementing, or superseding CAMEO that include tools, apps, or software developed by the private sector?
 - a. Has the EPA considered cost-savings that could be derived from allowing the private sector to provide this resource?
2. The "Action to Improve Chemical Facility Safety and Security" report included discussion on information sharing among stakeholders in the New York/New Jersey pilot program. Can you clarify how information sharing will be structured going forward, and what specific types of data will be shared with federal, state, tribal, regional, local, and other stakeholders?



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 26 2015

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

The Honorable James M. Inhofe
Chairman
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed please find the U.S. Environmental Protection Agency's responses to the Committee's Questions for the Record following the December 11, 2014, hearing entitled "Oversight of the Implementation of the President's Executive Order on Improving Chemical Facility Safety and Security."

I hope this information is helpful to you and the members of the Committee. If you have further questions, please contact me or your staff may contact Carolyn Levine in my office at levine.carolyn@epa.gov or (202) 564-1859.

Sincerely,

A handwritten signature in cursive script that reads "Laura J. Vaught".

Laura Vaught
Associate Administrator

Enclosure

**U.S. Environmental Protection Agency
Responses to Questions for the Record
from the
Senate Environment and Public Works Committee Hearing
December 11, 2014**

Questions from Senator Boxer:

1. On what date do you commit to completing ALL of the Executive Order's directives within your Agency's jurisdiction?

Response: The agency remains on track to meet the timeframes in EO 13650, as referenced in the federal Working Group's Report to the President.

2. Since 2002, the Chemical Safety Board (CSB) has recommended that ammonium nitrate hazards be incorporated into EPA's risk management program. Will EPA commit to address ammonium nitrate fertilizer hazards under its risk management program, and if so, when? Will implementation of these changes be completed before the President leaves office?

Response: Ammonium nitrate (AN) poses a unique challenge because it is a high-volume chemical used in both the fertilizer and explosives industries. Because of the uses of ammonium nitrate, the Occupational Safety and Health Administration (OSHA), the EPA, the Department of Homeland Security (DHS), and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) all have federal regulations that govern its management and, therefore, any efforts the EPA pursues regarding AN must be coordinated with these agencies and departments to ensure that the most appropriate vehicle for any additional regulation is utilized.

Ammonium nitrate is currently covered under the Emergency Planning, Community Right to Know Act (EPCRA), which requires facilities to report the Safety Data Sheet (SDS) and annual inventory information such as chemical name/description, physical and health hazards, pounds of the chemical, and type of storage, storage conditions, and location to State Emergency Planning Commissions (SERCs), Tribal Emergency Response Commissions (TERCs), Tribal Emergency Planning Commissions (TEPCs), Local Emergency Response Commissions (LEPCs), and fire departments. This information should be used to develop local emergency plans and also be shared with the community.

With respect to EPA regulation, the EPA issued a Request for Information (RFI) seeking, among other Risk Management Program (RMP) updates, public input on whether regulation of ammonium nitrate under the RMP is appropriate given the Clean Air Act authorities and the availability of regulatory options under OSHA's Process Safety Management (PSM) standard. The EPA is in the process of reviewing responses to the RFI and expects to issue a proposed rulemaking on the RMP more broadly by Summer 2015.

In the meantime, the EPA, OSHA, and ATF expect to update the *Chemical Advisory: Safe Storage, Handling, and Management of Ammonium Nitrate* published on August 30, 2013, in

early June 2015. This advisory, jointly prepared by the EPA, OSHA, and ATF, outlined regulatory requirements and best practices for the storing and handling of ammonium nitrate. In the future update, the agencies will consider new information learned as a result of the investigation of the West, Texas, incident, newly developed procedures and practices, new technical information, and clarifications and corrections.

3. On March 5, 2014, I asked Administrator McCarthy to have the Working Group consider using EPA's existing authority under the Clean Water Act to address risks posed by above ground chemical storage tanks in the wake of the Freedom Industries spill. In your May 8, 2014 response to me, you assured me that the Working Group would consider exercising this authority. Despite your assurance, the Working Group's Status Report to the President does not even mention this authority. Will EPA commit to fully evaluate options for actions under Section 311(j)(1)(C) of the Clean Water Act to regulate above ground chemical storage tanks? If so, when will this analysis be complete? Will you commit to give me a complete report on your analysis?

Response: As referenced in the federal Working Group's report to the President, the EPA is engaging with state drinking water administrators to encourage them to revisit existing source water assessments, review and update existing plans using information available through the various chemical regulatory programs, and determine whether adequate warning, preparedness, and preventive measures are in place.

The EPA Administrator recently announced that the Source Water Collaborative, a group of 25 national organizations united to protect America's sources of drinking water, launched a call to action that includes actions for water utilities to partner with landowners and businesses to protect local source water, and make sure they have plans in place with emergency responders and local governments to update source water assessments.

The agency is also engaging with states to assess actions to protect drinking water sources using Drinking Water Mapping Application for Protecting Source Waters (DWMAPS) and chemical plant information provided to local responders. This will enable local responders to identify potential risks to drinking water sources from potential spills from chemical plants and actions to prevent/minimize such risk.

Additionally, the EPA is committed to providing critical facility information directly to the people who need it most - local emergency planners and first responders - and helping them use the information to effectively prepare for and respond to chemical releases. Based on broad stakeholder feedback, the EPA believes that getting critical information to local communities in a timely manner is where we need to focus. At this time, the EPA is not planning to update the existing Spill Prevention, Control and Countermeasure (SPCC) rule.

EPCRA and community right-to-know regulations provide states and local communities with important chemical facility information and the authority to work with and, as needed, inspect these facilities to ensure compliance with the requirements, help them gain an understanding of the chemical risks at the facility, and know what steps to take to prepare for and respond to those risks. When communities work with their states officials who have the lead in overseeing

operations at facilities, they are better able to jointly address and prepare for potential risks from chemical facilities. For example, in the aftermath of the chemical release into the Elk River in West Virginia in 2014, the state of Oklahoma developed a GIS layer that identified Tier II chemical facility locations (as reported in compliance with the EPCRA requirements) and nearby public drinking water intakes and provided that information to their LEPCs and public water systems to ensure their local emergency planning efforts included this information and took steps to reduce these risks.

4. Methyl mercaptan is a toxic chemical that recently killed 4 workers at the DuPont chemical plant in La Porte, Texas. In 1994, EPA tried to put methyl mercaptan on a list of chemicals that must be reported in EPA's Toxics Release Inventory, which is supposed to help communities better prepare for the risk of a chemical release. When industry challenged the listing, EPA agreed to withdraw it to avoid litigation [59 Fed. Reg. 43048, Aug. 22, 1994]. However, EPA also said that it would promptly act to address the questions about listing the chemical that were raised by industry. It has been 20 years since then, and EPA has not yet taken the action it promised to take. When will EPA act to ensure that methyl mercaptan is reported by chemical companies on their Toxics Release Inventory reports?

Response: Methyl mercaptan does in fact remain on the EPCRA Section 302 Extremely Hazardous Substances list and is subject to the emergency planning reporting requirements under EPCRA sections 311 and 312 (a 500 pound reporting threshold). The reporting limitation you reference regarding methyl mercaptan applies to the annual reporting requirements under EPCRA section 313 (Toxics Release Inventory – TRI). States, LEPCs and local responders currently have the information they need under sections 311 and 312 of EPCRA (e.g. the amounts and locations of methyl mercaptan handled at a facility) to carry out their emergency planning and community right-to-know obligations.

5. During the toxic chemical leak at the DuPont chemical plant in La Porte, Texas, last month, a facility employee called 911, but gave no useful details about the chemical released in his call with the 911 operator. In response to the 911 operator's question whether there was a risk to the public from toxic chemicals escaping the facility, he answered "No ma'am, it is not." When the first responders arrived, they were unable to enter the facility where the employees died because they did not have the proper personal protective gear. First responders need information to protect themselves and to most effectively respond to the accident.

a. What actions will the Working Group take to ensure that first responders have accurate information before they arrive at the accident scene when there are toxic chemical releases?

b. The Working Group's June 4, 2014 Report to the President states that first responders believe information sharing efforts need significant improvement, and that first responders want to be able to obtain the most-actionable information in a user-friendly format. What steps is the Working Group taking to ensure the information provided to first responders is in an actionable and user-friendly format?

c. The Working Group's June 4, 2014 Report to the President states that a key lesson learned is that first responders want access to information about enforcement actions taken or violations discovered at facilities, in order to better understand and respond to hazards at chemical facilities. Has the Working Group taken any steps to make this information available to first responders? If not, what steps will the Working Group take to share this information in an easily accessible and user-friendly format?

d. In its Report to the President, the Working Group commits to share "certain data elements of CFATS, RMP, PSM, and MTSA data" with first responders and other state, local, and tribal entities. What specific data elements does the Working Group commit to provide first responders? How will that information be made available to first responders?

Response: The ability to communicate risks at chemical facilities with local first responders has been a key component of the Working Group's effort to improve chemical facility safety and security under the President's Executive Order. In response to the needs identified by LEPCs, SERCs, and first responders, the EPA held 32 workshops throughout Texas, Arkansas, Louisiana, Oklahoma, and New Mexico to reinforce the authorities, roles, and responsibilities under EPCRA and identify potential barriers to meeting requirements for developing and implementing a local emergency response plan. In order to respond to requests from SERCs and TERCs for assistance in clarifying EPCRA responsibilities to support emergency preparedness and planning efforts, the EPA is also developing informational factsheets for SERCs/TERCs and LEPCs/TEPCs and industry to assist them in understanding and meeting their responsibilities under EPCRA.

The EPA continues to upgrade its Computer-Aided Management of Emergency Operations (CAMEO) suite of applications, available online to emergency planners, first responders, and the general public. These upgrades will help emergency planners and first responders to access, store, and evaluate critical chemical facility and multi-agency regulatory data and information for developing emergency plans. Additional enhancements to CAMEO will expand analytical capability for LEPCs/TEPCs and promote information sharing. These enhancements include: ensuring that emergency planners and first responders have chemical and regulatory information on all Chemical Facility Anti-Terrorism Standard (CFATS) regulated facilities; adding new data fields to ensure that LEPCs integrate all available chemical facility information into their local CAMEO database; and developing and providing a complete web-based version of CAMEO that states can host on their own servers. This allows LEPCs an online method of accessing the state Tier II facility/chemical data and allows facilities to report online.

The President's FY 2016 budget includes a \$12 million increase for the risk management program in order to enhance the outreach and emergency planning technical assistance to local communities and accelerate the pace of CAMEO upgrades.

The EPA is also working to improve coordination at all levels of the regulator community and update the tools at their disposal. In August of 2013, a pilot program was launched in New York and New Jersey to evaluate best practices and test innovative methods for interagency collaboration on chemical facility safety and security. The pilot program brought together all

levels of government with the first responder community, along with other stakeholders, to identify actions for improving chemical facility safety and security. The resulting Standard Operating Procedures (SOPs) and lessons learned from the pilot program have helped to advance chemical facility safety. Specifically, the pilot enhanced areas of risk management by increasing local access to high-risk facility information to support more effective emergency planning and response; improving the sharing of inspection information to inform LEPC emergency planning; and identifying chemical facility points of contact to support local emergency response. Additionally, the pilot facilitated a better understanding of the information needs of first responders and communities before and during a chemical release, and SOPs have been established to develop and share best practices on sharing EPCRA Tier II and other critical information with first responders, and developing procedures to take advantage of existing drills and exercise opportunities to support and test existing LEPC contingency plans.

The EPA's Substance Registry Services (SRS) tool assists facilities housing chemical substances to determine their regulatory requirements by providing information about chemical substances tracked or regulated by the EPA or other sources. The SRS has been updated to include CFATS and Process Safety Management (PSM)-covered substances, which allows facilities to be informed about potential regulatory coverage under PSM and CFATS in addition to other EPA regulatory programs. SRS was also expanded to include Maritime Transportation Security Act (MTSA) and ATF's List of Explosive Materials based on the needs of industry members, state and federal regulators, and other stakeholders. An analysis has been done comparing the list against SRS to identify those substances that are in SRS versus not in SRS.

Additionally, the EPA's Facility Registry Service (FRS) tool integrates facility data from nearly 90 different federal and state systems, allowing users to compare facilities between systems, including chemical data and compliance history. The FRS has been updated to include facilities that complete a DHS Top-Screen submission for CFATS, which allows federal departments and agencies to identify: (1) facilities that are covered by multiple federal regulatory entities, and (2) potentially non-compliant facilities, often referred to as outliers.

6. Given the number of accidents that have occurred since the President issued the Executive Order, including the recent fatal toxic gas release at the DuPont plant in Texas that killed four workers, has the urgency to prevent future disasters caused the EPA to expedite the rule-making process to ensure that new RMP rules are issued promptly? Has EPA considered issuing an Alert or other Guidance concurrently with a notice of proposed rulemaking?

Response: OSHA and the Chemical Safety Board are still investigating the circumstances regarding the DuPont facility incident.

Based upon information gathered through the EPA's implementation of the RMP program, recommendations and practices developed by process safety professionals, and stakeholder comments to the EPA's RFI, the EPA plans to propose amendments to the RMP regulation in 2015 with the intent to finalize such amendments in 2016, depending on any potential additional information. These amendments would be complimented by alerts and guidance documents.

The RMP regulation has been effective in preventing and mitigating chemical incidents in the United States and protecting human health and the environment from chemical risks and hazards. However, major incidents highlight the importance of reviewing and evaluating current practices and regulatory requirements and applying lessons learned to continuously advance process safety management.

7. After the tragic explosion at the fertilizer plant in West, Texas, the Government Accountability Office (GAO) conducted a review of the federal regulatory agencies' oversight of the safety of ammonium nitrate fertilizer. In the course of conducting that review, GAO was denied access by a number of States to EPCRA reporting data from facilities that handle ammonium nitrate. In addition, the Attorney General of Texas, now Governor-elect, issued a legal opinion arguing that State law allowed for the withholding from the public of information required to be reported under the federal EPCRA statute. When asked by the media how the state could justify withholding this information, he stated that members of the public could simply drive up to the chemical facilities and ask them directly.

a. Is EPA aware of other instances in which access to EPCRA reporting data was restricted or refused? If so, please provide a list of all such instances, along with a description of what data was restricted or refused, who restricted or refused it, how and when EPA was made aware of the restriction or refusal, and what EPA did to resolve the problem.

b. Will EPA commit to issuing guidance to States making clear that the federal EPCRA statute requires that this information be made public?

Response: Under EPCRA sections 311 and 312, covered facilities *must* provide chemical information to LEPCs and first responders for emergency planning and preparedness. The EPA does not have information on instances where governmental entities or facilities may have limited or failed to provide EPCRA reporting data to the local community.

Regarding public access to facility and hazardous chemical information, EPCRA section 312 provides that the owner or operator of any facility required to prepare a Safety Data Sheet (SDS) for a hazardous chemical under OSHA shall submit to the SERC, LEPCs, and fire departments an annual inventory of the SDS hazardous chemicals present at the facility during the preceding calendar year. This annual inventory is commonly referred to as the Tier II form. Pursuant to EPCRA Sec. 312(e)(3) and EPCRA Sec. 324(a), Tier II information for a specific facility may be obtained by sending a written request to the SERC or the LEPC. If the SERC or LEPC does not have the requested Tier II information, they shall obtain it from the facility on behalf of the requestor. The EPA is developing factsheets and online training for SERCs/TERCs and LEPCs/TEPCs to assist them in clarifying, understanding and meeting their responsibilities under EPCRA.

8. The Working Group coordinated a pilot in New York-New Jersey involving multiple agencies at the Federal, state, and local levels.

- a. What kinds of best practices or innovative methods were developed in the Region 2 Pilot Project developed under the Executive Order and what lessons were learned from the pilot?
- b. How and when will EPA and the other Working Group agencies apply these lessons in other regions of the country?
- c. The pilot specifically revealed "the need for Federal, State, and local partners to work together to increase industry's compliance with EPCRA requirements." After reviewing state data on reporting under EPCRA, EPA identified violations at 4 facilities in New York and 13 facilities in New Jersey. Is the Working Group taking steps to ensure that this process of information sharing to increase compliance with EPCRA requirements occurs in other regions? How does the Working Group propose to ensure that such information sharing continues to take place in the future?
- d. Please provide me with a copy of any report detailing the outcome of the pilot project.

Response: In August of 2013, a pilot program was launched in New York and New Jersey to evaluate best practices and test innovative methods for interagency collaboration on chemical facility safety and security. The pilot program brought together all levels of government with the first responder community, along with other stakeholders to identify actions for improving chemical facility safety and security. The resulting SOPs and lessons learned from the pilot program have helped to advance chemical facility safety. Specifically, the pilot enhanced areas of risk management by increasing local access to high-risk facility information to support more effective emergency planning and response; improving the sharing of inspection information to inform LEPC emergency planning and enforcement; and identifying chemical facility points of contact to support local emergency response.

Additionally, the pilot facilitated a better understanding of the information needs of first responders and communities before and during a chemical release, and SOPs have been established to develop and share best practices on sharing EPCRA Tier II and other critical information with first responders, and developing procedures to take advantage of existing drills and exercise opportunities to support and test existing LEPC contingency plans. Other EPA regional offices are collaborating with their federal partners to review the SOPs and to adopt the pilot SOPs or to tailor and establish their own.

9. What, if anything, has the EPA done to improve communities' access to information and participation during planning for emergency responses? Does the EPA have any plans to further improve this, along with coordination with local responders? If so, please describe all such plans along with a timeline for their completion.

Response: In response to the needs identified by LEPCs and SERCs, the EPA is taking a number of steps to strengthen and further support the state and local infrastructure and ensure stakeholder involvement. The EPA held 32 workshops for LEPCs throughout Texas, Arkansas, Louisiana, Oklahoma, and New Mexico to reinforce their authorities, roles, and responsibilities

under EPCRA and identify barriers to meeting their requirement for developing and implementing a local emergency response plan.

Another issue consistently raised by SERCs and LEPCs was the need for training. The EPA is moving forward on developing online EPCRA training modules for SERCs/TERCs and LEPCs/TEPCs. This training is intended to reinforce their authorities and roles to meet their responsibilities under EPCRA for the development and implementation of local emergency response plans, and is on schedule for completion by June 6, 2015. In addition, the EPA is working to update, and revise as necessary, planning and response guidance materials for SERCs and LEPCs. This will help ensure SERCs/TERCs and LEPCs/TEPCs have the latest information in a format that allows them to share and exchange among themselves and with other organizations and stakeholders.

In order to respond to requests from SERCs and TERCs for assistance in clarifying EPCRA responsibilities to support emergency preparedness and planning efforts, the EPA is also developing factsheets for SERCs/TERCs and LEPCs/TEPCs and industry to assist them in understanding and meeting their responsibilities under EPCRA. Further, the EPA established an email list-serve to provide monthly Working Group updates to SERCs/TERCs to keep them informed about upcoming conference and meetings, new guidance and other materials, and other EO-related information they will be receiving. The agency is on track to implement all of the short and medium term EPA actions in the federal Working Group Action Plan related to strengthening community planning and preparedness.

10. The Executive Order directed the Working Group to look at existing statutory authorities, but also required your agency to make recommended legislative changes. The Working Group's report to the President does not contain any recommended legislative changes to the statutes governing EPA's oversight of chemical facility safety. Please provide the Committee with your recommended legislative changes that would improve safety at chemical facilities.

Response: As discussed in the Working Group's Report to the President, the EPA's efforts are focused on modernizing EPA's regulations and guidances. The EPA is not recommending legislative changes of its own authorizing statutes at this time, but continues to support the other legislative recommendations referenced in the Report.

Questions from Senators Barbara Boxer and Edward Markey:

1. Executive Order 13650 ordered a number of specific actions to be completed by the Working Group. For the following list of actions, please indicate: i) whether the action was completed as directed in the Executive Order; ii) if so, provide a copy of the plan, assessment, list, analysis, recommendations, proposal, options, determination, Request for Information, or Solicitation of Public Input/Comment; and, iii) if not, indicate the date on which the action will be completed as directed. In each response, please also describe how the Working Group had addressed each specific element within each of the specific actions required by the Executive Order.

a. The assessment conducted by the Attorney General, through the head of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), into the feasibility of sharing data related to the storage of explosive materials with State Emergency Response Commissions (SERCs), Tribal Emergency Response Commissions (TERCs), Local Emergency Planning Committees (LEPCs), Tribal Emergency Planning Committees (TEPCs). (Sec. 3(b); Within 90 days).

Response: Each of the requirements of the EO were completed within the timeframe designated in the Executive Order as noted in the Progress Updates provided to Congress in December 2013, and February 2014, which can be found at:

<https://www.osha.gov/chemicalexecutiveorder/index.html>. The Report to the President issued on June 6, 2014, included the findings, lessons learned, actions taken by that date, prioritized next steps, and the path forward. As noted in the report, the federal Working Group is working with the SERCs, TERCs, LEPCs, and TEPCs on information sharing and will be updating various guidance and regulations in accordance with the schedule set forth in the Federal Action Plan on pages xiii through xviii.

Regarding the storage of explosive materials, following the issuance of the Report to the President, the Chemical EO Working Group has been addressing data-sharing related to the storage of explosive materials. As the owner of data related to explosive materials, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) has taken the lead on this issue. The EPA defers to ATF to address data sharing related to the storage of explosive materials.

b. The assessment conducted by the Secretary of Homeland Security into the feasibility of sharing Chemical Facility Anti-Terrorism Standards (CFATS) data with SERCs, TEPCs, and LEPCs on a categorical basis. (Sec. 3(c); Within 90 days).

Response: Each of the requirements of the EO were completed within the timeframe designated in the Executive Order as noted in the Progress Updates provided to Congress in December 2013, and February 2014. The Report to the President issued on June 6, 2014, included the findings, lessons learned, actions taken by that date, prioritized next steps, and the path forward.

With respect to sharing CFATS data, following the issuance of the Report to the President, the Chemical EO Working Group has been developing a mechanism and procedures for sharing CFATS data. As the owner of CFATS data, the Department of Homeland Security has taken the lead on this issue. The EPA defers to DHS to address sharing of CFATS data.

c. A list of any changes determined to be needed to existing memorandums of understanding (MOUs) and processes between EPA and CSB, ATF and CSB, and the Occupational Safety and Health Administration (OSHA) and CSB for timely and full disclosure of information. Please provide copies of the current drafts of the revised MOUs; or, if it was deemed to be appropriate by the Working Group, a draft of the single model MOU developed with CSB in lieu of existing agreements. (Sec. 4(c); Within 90 days).

Response: The EPA recommended continued implementation of the current EPA-CSB MOU. The Department of Justice is continuing deliberations with the CSB regarding federal department and agency MOU development and implementation.

d. The analysis, including recommendations, on the potential to improve information collection by and sharing between agencies to help identify chemical facilities which may not have provided all required information or may be non-compliant with Federal requirements to ensure chemical facility safety. (Sec. 5(a); Within 90 days).

Response: Each of the requirements of the EO were completed within the timeframe designated in the Executive Order as noted in the Progress Updates provided to Congress in December 2013, and February 2014. The Report to the President issued on June 6, 2014, included the findings, lessons learned, actions taken by that date, prioritized next steps, and the path forward.

In order to improve data sharing among federal departments and agencies used to identify potentially noncompliant facilities, prior to issuing the Report to the President, the EPA and DHS adopted new procedures to identify facilities that, based on their required filings, could possess threshold levels of CFATS Chemicals of Interest but have not yet filed required Top-Screen information with DHS or a required Risk Management Plan (RMP) with the EPA.

Another key step to assist federal departments and agencies in identifying non-compliant facilities and/or other potential compliance issues is linking data from multiple agencies. Since the issuance of the Report to the President, the EPA's Facility Registry Service (FRS) integrated facility data from nearly 90 different federal and state systems, allowing users to compare facilities between systems, including chemical data and compliance history. The FRS has been updated to include facilities that complete a DHS Top-Screen submission for CFATS, which allows federal departments and agencies to identify: (1) facilities that are covered by multiple federal regulatory entities, and (2) potentially non-compliant facilities, often referred to as outliers.

DHS and the EPA also initiated a process to compare the CFATS 'Top Screen' database and the RMP database to determine if the CFATS database included facilities that should have also reported under the RMP chemical accident prevention program. As a result of this effort, the EPA contacted hundreds of facilities to request information and visited some facilities to help determine whether the facility meets criteria to implement a risk management program requiring submittal of a risk management plan. Following this extensive review, fewer than 15 non-filing facilities were identified and the EPA has worked with these facilities to ensure they comply with the rule. This information indicates that the vast majority of CFATS-covered facilities are reporting under the RMP program.

e. The recommendations for possible changes to streamline and otherwise improve data collection to meet the needs of the public and Federal, State, local, and tribal agencies (including those charged with protecting workers and the public), consistent with the Paperwork Reduction Act and other relevant authorities, including opportunities to lessen the reporting burden on regulated industries. (Sec. 5c); Within 180 days).

Response: Each of the requirements of the Executive Order were completed within the timeframe designated in the executive order as noted in the Progress Updates provided to Congress in December 2013, and February 2014. The Report to the President issued on June 6, 2014, included the findings, lessons learned, actions taken by that date, prioritized next steps, and the path forward.

The EPA continues to work with stakeholders, including federal, state, local, and tribal agencies as well as the public and industry, to identify ways to improve data collection and sharing while lessening the burden on regulated entities. Specifically, the EPA is working with NOAA to enhance the Computer-Aided Management of Emergency Operations (CAMEO) suite of applications, available online to emergency planners and first responders, to assist them in planning for and responding to chemical emergencies. These upgrades will help emergency planners and first responders to better access, store, and evaluate critical chemical facility and multi-agency regulatory data and information for developing emergency plans.

Additional enhancements to CAMEO will expand analytical capability for LEPCs/TEPCs and promote information sharing by: ensuring that emergency planners and first responders have chemical and regulatory information on all CFATS regulated facilities; adding new data fields to ensure that LEPCs integrate all available chemical facility information into their local CAMEO database; and developing and providing a complete web-based version of CAMEO that states can host on their own servers. This allows LEPCs an online method of accessing the state Tier II facility/chemical data and allows facilities to report online. Additionally, when the EPA proposes any changes to the RMP regulation to advance safety, we will look at potential opportunities to eliminate unnecessary information collected in the Risk Management Plans and will provide any changes in data collection.

f. The options developed for improved chemical facility safety and security that identifies improvements to existing risk management practices through agency programs, private sector initiatives, Government guidance, outreach, standards, and regulations. (Sec. 6(a)(i); Within 90 days).

Response: To meet the directive of the EO to modernize key policies, regulations, and standards, the Working Group published a preliminary list of options for improving chemical facility safety and security for stakeholder comment on January 3, 2014. The options identified resulted from reviewing existing programs, recommendations from the safety and security communities, and feedback from the EO listening sessions as well as reviewing investigation reports of major incidents.

As a result of stakeholder comments, the Working Group plan for modernizing policies and regulations are detailed in the Report to the President. As a result of this effort, the EPA issued an RFI seeking comment on potential changes to the RMP regulation with the expectation to issue a proposed rule in the summer of 2015 and expects to issue updated guidance on issues such as safer alternatives and AN handling and storage. The EPA will continue to engage with the chemical industry and professional organizations on private sector safety initiatives such as consensus safety codes and standards.

g. The list of potential regulatory and legislative proposals to improve the safe and secure storage, handling, and sale of ammonium nitrate and identify ways in which ammonium nitrate safety and security can be enhanced under existing authorities. (Sec. 6(b); Within 90 days).

Response: On August 30, 2013, the EPA, the Occupational Safety and Health Administration, and the Bureau of Alcohol, Tobacco, Firearms and Explosives released a chemical advisory that provides information to communities, workers, first responders and commercial sectors on the hazards of ammonium nitrate (AN) storage, handling, and management. To further bolster these efforts, in February 2014, Assistant Secretary of Labor for Occupational Safety and Health, Dr. David Michaels, signed a letter that was circulated by agricultural trade associations to provide more than 7,000 employers with legal requirements and best practice recommendations for safely storing and handling ammonium nitrate.

OSHA is currently developing rulemaking options to better cover AN hazards through either the PSM standard or improvements to the Explosives and Blasting Agents standard. As OSHA develops its approach to improve workplace safety associated with ammonium nitrate hazards, the EPA will consider if additional action to protect the community is needed to complement OSHA regulations. As far as non-regulatory approaches are concerned, the EPA, OSHA, and ATF plan to update the *Chemical Advisory: Safe Storage, Handling, and Management of Ammonium Nitrate* (published on August 30, 2013) in June of 2015, which will include new information resulting from the West, Texas, incident investigation, newly developed procedures and practices, new technical information, and clarifications and corrections.

h. The determination of whether the EPA's Risk Management Program (RMP) and the OSHA's Process Safety Management Standard (PSM) can and should be expanded to address additional regulated substances and types of hazards, and the plan, including a timeline and resource requirements, to expand, implement, and enforce the RMP and PSM in a manner that addresses the additional regulated substances and types of hazards. (Sec. 6(c); Within 90 days).

Response: To meet the directive of the EO to modernize key policies, regulations, and standards, the Working Group published a preliminary list of options for improving chemical facility safety and security for stakeholder comment on January 3, 2014. The options identified resulted from reviewing existing programs, recommendations from the safety and security communities, and feedback from the EO listening sessions as well as reviewing investigation reports of major incidents. Drawing on stakeholder comment, the Working Group developed a plan for modernizing policies, which is laid out in the May 2014, Report for the President *Actions To Improve Chemical Facility Safety and Security – A Shared Commitment*.

The RMP regulation has been effective in helping to prevent and mitigate chemical facility incidents in the United States and protecting human health and the environment from chemical risks and hazards. However, major incidents highlight the importance of reviewing and evaluating current practices and regulatory requirements and applying lessons learned to continuously advance process safety management. In order to gather the information necessary to proceed with regulatory modernization of RMP and retain close coordination with OSHA on

its implementation of the PSM standard, the EPA published a RFI on July 29, 2014. The RFI sought public input on 19 process safety and risk management issues relevant to the RMP regulations. The public comment period closed on October 29, 2014, and the EPA is reviewing nearly 100,000 comments received. The EPA's goal would be to propose any appropriate priority amendments to the RMP regulation to advance safety in 2015.

i. The list of chemicals, including poisons and reactive substances that should be considered for addition to the CFATS Chemicals of Interest list. (Sec. 6(d); Within 90 days).

Response: Each of the requirements of the EO were completed within the timeframe designated in the Executive Order as noted in the Progress Updates provided to Congress in December 2013, and February 2014. The Report to the President issued on June 6, 2014, included the findings, lessons learned, actions taken by that date, prioritized next steps, and the path forward.

The Chemical EO Working Group has been addressing the issue of listing additional CFATS Chemicals of Interest. As the agency responsible for issuing CFATS regulations, the Department of Homeland Security is the lead on this issue. The EPA defers to DHS to respond to the issue of listing additional Chemicals of Interest.

j. The list of changes that need to be made in the retail and commercial grade exemptions in the PSM Standard and the Request for Information designed to identify issues related to modernization of the PSM Standard and related standards necessary to meet the goal of preventing major chemical accidents. (Sec. 6(e); Within 90 days)

Response: Each of the requirements of the Executive Order were completed within the timeframe designated in the executive order as noted in the Progress Updates provided to Congress in December 2013, and February 2014. The Report to the President issued on June 6, 2014, included the findings, lessons learned, actions taken by that date, prioritized next steps, and the path forward.

The Chemical EO Working Group has been addressing the issue of revising the PSM standard. As the agency responsible for issuing PSM regulations, the Department of Labor is the lead on this issue. The EPA defers to the Department of Labor, Occupational Safety and Health Administration to respond.

Questions from Senator Edward Markey:

1) In 2009, during consideration of H.R. 2868, the Administration went through an inter-agency process to establish policy principles related to the use of inherently safer technology. Those principles are pasted below, and were delivered in Congressional testimony by Peter S. Silva, then-Assistant Administrator for Water at EPA as well as a witness representing the Department of Homeland Security. While these principles related to a piece of legislation that was not enacted and thus also not referred to in E.O. 13650, some of the principles do represent general policy statements. You did not fully or

directly respond to these questions when I submitted them to you following our March 2014 hearing. Please do so now.

a. Does the Administration continue to believe that all high-risk chemical facilities should assess IST methods and report the assessment to the federal government? If not, why not (and please provide copies of documents that establish the Administration's new policy)?

Response: Consideration and adoption of safer technologies and alternatives at high risk chemical facilities represent important steps to reduce risks. As part of the implementation of EO 13650, the Working Group solicited public comment on options, including the use of safer technologies, to encourage such risk reduction at chemical facilities and is currently evaluating those comments and potential next steps.

As discussed in the Report to the President, based upon information and feedback from RFIs and other efforts, OSHA and EPA are considering the best mechanism for promoting the use of safer technologies and alternatives. The EPA and OSHA are also considering other possible options to reinforce and further spread the use of safer technology and alternatives in managing chemical risk, including issuing an alert on safer technology and alternatives, working with industry to promote examples of best practices, and developing guidance to inform chemical operators of safer technology, processes, and alternative solutions.

b. Does the Administration continue to believe that regulators should have the authority to direct the highest risk chemical facilities to implement IST methods if such methods enhance overall security, are feasible, and, in the case of water sector facilities, consider public health and environmental requirements? If not, why not (and please provide copies of documents that establish the Administration's new policy)?

Response: The EPA continues to support the consideration and adoption of safer technologies and alternatives at high risk chemical facilities as important steps to reduce risks.

Based on stakeholder requests for more robust preventative measures, the EPA and OSHA developed a plan set forth in the Report to the President to encourage chemical facilities to integrate safer technology and alternatives into a facility's process safety programs. The plan consists of three steps, which are not mutually exclusive: 1. Issue an Alert; 2. Develop Voluntary Guidance; and 3. Consider Regulatory Options. The EPA and OSHA are analyzing the feedback received from the RFIs to determine the appropriate course of action with respect to any modifications to the RMP and/or PSM requirements to include specific safer technology and alternatives analysis and documentation of actions taken to implement feasible alternatives. The EPA or OSHA would not, however, determine specific technology, design, or process selection by chemical facility owners or operators.

The EPA and OSHA are also considering other possible options to reinforce and further spread the use of safer technology and alternatives in managing chemical risk throughout industry. Such options include a partnership with industry in order to encourage such approaches through existing stewardship programs, work with industry on a safer technology and alternatives/

inherent safety clearinghouse, and recognition programs.

2) The Department of Homeland Security¹ and EPA² have both repeatedly stated in Congressional testimony that the exclusion of drinking water and wastewater treatment facilities from federal chemical security regulations is a critical security gap.

a. Does EPA still agree with its prior statements? If not, please explain why not.

b. In 2009, the Administration also believed that "EPA should be the lead agency for chemical security for both drinking water and wastewater systems, with DHS supporting EPA's efforts." Does EPA still agree with this statement, and if not, why not, given the nexus between the requirements for safe drinking water and treatment of wastewater and the need to secure and protect the public from the chemicals that are often used to achieve these requirements?

c. Will EPA use its RMP, Safe Drinking Water Act or Clean Water Act authority to require upgrades to security for drinking and wastewater facilities in light of the long-standing critical security gap for these facilities? Please provide me with the specific actions EPA plans to take along with a timeline for their completion. If not, why not?

d. Numerous drinking and wastewater facilities have successfully and inexpensively incorporated IST into their operations, including the replacement of chlorine gas with sodium hypochlorite or UV systems. Does EPA believe that the adoption of IST should be considered by all drinking and wastewater facilities as one measure that could address the critical security gap that exists for these facilities? Why or why not?

Response: The EPA continues to support including waste water and drinking water facilities under chemical facility safety and security programs and continues to support the consideration and adoption of safer technologies and alternatives at high risk chemical facilities as important steps to reduce risks.

Safe drinking water and properly treated wastewater are critical to modern life. The EPA provides information to help drinking water and wastewater utilities:

- Assess and reduce vulnerabilities to potential terrorist attacks;
- Plan for and practice response to emergencies and incidents; and
- Develop new security technologies to detect and monitor contaminants and prevent security breaches.

It is important for drinking water and wastewater utility managers, board members, elected and appointed officials to understand the benefits of investing in preparedness, prevention and mitigation activities at the utility. Federal and state agencies have long been active in addressing

¹ See <https://www.dhs.gov/news/2011/0330/written-testimony-nppd-house-energy-and-commerce-hearing-titled-hr-908>, and <http://democrats.energycommerce.house.gov/sites/default/files/documents/TestimonyBeers-EE-Drinking-Water-System-Security-CFAT-Act-2009-10-1-pdf>.

² See: [http://www.epa.gov/ocirpage/hearings/testimony/111 2009 2010/2010 0728 ccd.pdf](http://www.epa.gov/ocirpage/hearings/testimony/111%2009%202010/2010%200728%20ccd.pdf).

the risks and threats to water and wastewater utilities through regulations, technical assistance, research, and outreach programs. As a result, an extensive system of regulations governing maximum contaminant levels of 90 conventional contaminants (most established by EPA), construction and operating standards (implemented mostly by the states), monitoring, emergency response planning, training, research, and education have been developed to better protect the nation's drinking water supply and receiving waters.

Since the events of 9/11, the EPA has been designated as the sector-specific agency responsible for infrastructure protection activities for the nation's drinking water and wastewater systems. EPA is utilizing its position within the water sector and working with its stakeholders to provide information to help protect the nation's drinking water supply from terrorist or other intentional acts. For more information, see:

<http://water.epa.gov/infrastructure/watersecurity/basicinformation.cfm>

Questions from Senator Patty Murray

1. As you know, the Emergency Planning and Community Right-to-Know Act was passed in 1986, and provides resources to plan for chemical emergencies. Since its enactment there have been a large number of incidents, highlighting the need for substantial emergency planning.

a. Do the recent events at the DuPont industrial plant and the West Fertilizer Company facility in Texas warrant a statutory update of the Emergency Planning and Community Right-to-Know Act?

Response: EPCRA does not provide resources for State Emergency Response Commissions and Local Emergency Response Commissions (SERCs and LEPCs) to implement the requirements stipulated in the statute. The statute provides for the establishment of a state and local infrastructure for chemical facility emergency response, preparedness, and prevention and necessary authorities for those entities to implement the requirements of EPCRA.

As identified through the listening sessions and outreach efforts of the Executive Order on Improving Chemical Facility Safety and Security, SERCs and LEPCs need technical support and assistance in meeting the planning and preparedness requirement of EPCRA, including assessing the risks associated with hazardous chemicals in their communities and ensuring community preparedness for incidents that may occur.

In this regard, the EPA is moving forward on developing online EPCRA training modules for SERCs/TERCs and LEPCs and TERCs. This training is intended to reinforce their authorities and roles to meet their responsibilities under EPCRA for the development and implementation of local emergency response plans, and is on schedule for completion by June 6, 2015. In addition, the EPA is working to update, and revise as necessary, planning and response guidance materials for SERCs and LEPCs. This will help ensure SERCs/TERCs and LEPCs/TERCs have the latest information in a format that allows them to share and exchange among themselves and with other organizations and stakeholders.

In order to respond to requests from SERCs and TERCs for assistance in clarifying EPCRA responsibilities to support emergency preparedness and planning efforts, the EPA is also developing factsheets for SERCs/TERCs and LEPCs/TEPCs and industry to assist them in understanding and meeting their responsibilities under EPCRA.

i. How have the owners of chemical facilities contributed to the training of first responders to potential accidents? How has the agency ensured that first responders are receiving adequate training?

Response: The EPA is moving forward on developing online EPCRA training modules for SERCs/TERCs and LEPCs/TERCs. This training is intended to reinforce their authorities and roles to meet their responsibilities under EPCRA for the development and implementation of local emergency response plans, and is on schedule for completion by June 6, 2015. In addition, the EPA is working to update, and revise as necessary, planning and response guidance materials for SERCs and LEPCs. During the listening sessions conducted by the Working Group, there were many examples identified of facility operators working with state and local response officials in the training of first responders.

a. How have Congress' repeated cuts to the EPA's budget and governing from crisis to crisis impacted the agency's ability to reach out to stakeholders and gather meaningful information? If Congress fails to repeal sequestration for the next fiscal year, how will implementation of the President's executive order be impacted?

Response: The 2015 President's Budget requested additional resources to support state and local prevention and preparedness efforts. The EPA did not receive additional funding to fully support local prevention and preparedness efforts in the enacted FY 2015 Omnibus Appropriations bill. The EPA is making a concerted effort to prioritize the limited FY 2015 resources within the program area for the EO action items, but some upgrades to CAMEO and outreach will be delayed. The FY 2016 President's Budget requests a \$12 million increase.

Questions from Senator Michael Enzi

1. The Federal Action Plan outlined in the "Action to Improve Chemical Facility Safety and Security" report includes, under Item 4, 'Expanding Tools to Assist SERCs, TERCs, LEPCs, and TEPCs in Collecting, Storing, and Using Chemical Facility Information,' the intention to improve the Computer-Aided Management of Emergency Operations (CAMEO) hazardous material response software in order to expand analytical capabilities and promote information sharing. My understanding is that this is being developed at the EPA. Is the EPA considering options for enhancing, supplementing, or superseding CAMEO that include tools, apps, or software developed by the private sector?

a. Has the EPA considered cost-savings that could be derived from allowing the private sector to provide this resource?

Response: The private sector is heavily involved in all CAMEO life-cycle activities. This includes programming, scientific support, documentation, user support, and the use of commercial software and database systems.

Since its inception over 25 years ago, CAMEO has been a joint project between the EPA and NOAA. Formerly, system development was split between the two agencies. Currently all development is performed by NOAA. NOAA also provides chemists for maintaining the chemical reference database, GIS experts for the mapping function, and air modelling experts for the air-dispersion modelling program. The EPA provides funding, project management, regulatory expertise, user support, distribution, and website services.

The primary reason the EPA and NOAA initially developed CAMEO was because most local communities could not afford commercial emergency management software as EPCRA provided no funding for SERCs and LEPCs to meet their requirements under the statute. The CAMEO project was designed to provide local communities with the essential capability needed to meet their responsibilities free of charge.

As identified through the listening sessions and outreach efforts of the Executive Order on Improving Chemical Facility Safety and Security, SERCs and LEPCs need technical support and assistance in meeting the planning and preparedness requirement of EPCRA including assessing the risks associated with hazardous chemicals in their communities and ensuring the development and implementation of the local contingency plan for chemical incidents that may occur. CAMEO and the planned further enhancements to the CAMEO suites will be a significant step in assisting the SERCs and LEPCs meet these needs while maintaining their limited resources to support their coordination with industry and outreach to the community on what they should do when an accident occurs. Through EPA and NOAA contracts, the private sector plays a critical role in the success of CAMEO.

2. The "Action to Improve Chemical Facility Safety and Security" report included discussion on information sharing among stakeholders in the New York/New Jersey pilot program. Can you clarify how information sharing will be structured going forward, and what specific types of data will be shared with federal, state, tribal, regional, local, and other stakeholders?

Response: The New York/New Jersey pilot facilitated a better understanding of the information needs of first responders and communities before and during a chemical release. Standard Operating Procedures (SOPs) have been established to develop and share best practices on sharing EPCRA Tier II and other critical information to first responders, and developing procedures to take advantage of existing drills and exercise opportunities to support and test existing LEPC contingency plans. Over the next nine months, the Regional Working Groups established under the EO will work to identify and implement the appropriate SOPs for their Region. This will include the process for sharing information and what information will be shared with stakeholders.